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IN THE

Supreme Court of the United States

October Term, 1946

No. 228

TROY LAUNDRY COMPANY, a corporation, and F. R.
MILLER, Vice President of Troy Laundry Company,
Petitioners,

vs.

W. WILLARD WIRZ, Chairman of the National Wage
Stabilization Board,
Respondent.

**PETITION FOR WRIT OF CERTIORARI AND
BRIEF IN SUPPORT THEREOF.**

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W. WILLARD WIRTZ, Chairman of the National Wage
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Respondent.

PETITION FOR WRIT OF CERTIORARI.

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Troy Laundry Company, a corporation, resident of the State of California [R. 83], and F. R. Miller, Vice President of said corporation, hereby respectfully petition this Court to issue a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit requiring that certain cause in which petitioners herein were the appellants and in which respondent herein was the appellee, being Number 11,162 in said Circuit Court of Appeals, to be certified to the Supreme Court for review of the judgment of said Circuit Court of Appeals [R. 125] af-

firming judgment of the United States District Court for the Southern District of California, Central Division.
[R. 91-93.]

Questions Presented.

1. Does an administrative agency that has no express statutory authority to subpoena documents have the implied power to do so?
2. Does Subsection 7 (b) of the War Labor Disputes Act (57 Stat. 163; 50 U. S. C. App., Secs. 1501-1511) grant power to the National War Labor Board to issue subpoenas in a proceeding before said Board which does not involve a labor dispute?
3. Where one agency, the National War Labor Board, has been designated to administer two different Acts of Congress, the War Labor Disputes Act and the Wage Stabilization Act, does the fact that the Chairman of the National War Labor Board has been given statutory authority in the War Labor Disputes Act to issue subpoenas in administering said Act also give said Chairman the power to issue said subpoenas in a proceeding under the Wage Stabilization Act, which Act does not give agency administering it the power to issue subpoenas?
4. Does not the enforced production of the books and records of petitioner corporation under the circumstances shown in the record, constitute an unreasonable search and seizure within the inhibition of the Fourth Amendment to the Constitution of the United States?
5. Did not the grant of authority to the National War Labor Board to issue subpoenas die with the said Board upon its abolition by Presidential Order? And was it not beyond the power of the President to transfer said authority to the Wage Stabilization Board?

Statement.

In the District Court the matter was submitted on the verified pleadings, to wit: The Government's application to compel the corporation and its officer to produce the books and records and affidavits in support thereof [R. 2-16] and the reply of the corporation and its officer and affidavits in support thereof. [R. 17-34.] Petitioner Troy Laundry Company, a corporation, was engaged in rendering a local laundry and cleaning services solely to the citizens of Los Angeles metropolitan community. [R. 37.] At the time the action was commenced one George Taylor was Chairman of the National War Labor Board [R. 54] and said Board was the agency which administered both the Economic Stabilization Act of October 2, 1942 [R. 54], and the War Labor Disputes Act of June 25, 1943. [R. 60-61.] Following the abolition of the National War Labor Board by Presidential Order the duties of the Chairman of said Board in administering the Wage Stabilization Act were transferred by Presidential Order to the Chairman of the National Wage Stabilization Board, and respondent, W. Willard Wirtz, Chairman of said latter Board, was substituted in the proceeding in the Circuit Court of Appeals as appellee. [R. 114.]

On August 21, 1944, an inspector of the Department of Labor, stating that she was from the Bureau of Labor Statistics, obtained access to the books and records of appellant corporation, petitioner herein. She did not disclose that she was obtaining the information in connection with the Wage Stabilization Act [R. 34, 24], or that her purpose was to subsequently bring proceedings for alleged violations thereof. [R. 24.] On December 8, 1944, the Enforcement Division of the Tenth Regional War Labor Board directed that a hearing be held to determine whether

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the appellant corporation had violated the Wage Stabilization Act. [R. 59.] While this hearing was pending, the same inspector was sent forth in an endeavor to obtain further information from the books and records of appellants. [R. 27.] Appellants refused access to same. [R. 4-5.] The hearing was held before the Enforcement Division of the Tenth Regional War Labor Board on April 17 and 18, 1945, at which counsel for the appellant corporation appeared specially and objected to the proposed proceedings on the grounds that the Board had no jurisdiction over it, that there was no proper or any authorization or order for said hearing, that there was no lawful or proper notice of said hearing served. [R. 39.] Appellants refused to produce the books for the scrutiny of the Enforcement Division. [R. 39, 84.]

The original appellee, George Taylor, as Chairman of the National War Labor Board, thereafter executed and caused to be served a subpoena and *subpoena duces tecum* on appellant F. R. Miller only. [R. 84.] The appellant corporation then filed in the District Court a complaint for injunction to restrain appellant Miller from producing the records of the corporation before the members of the Enforcement Division of the Tenth Regional War Labor Board and to restrain said members from holding a hearing concerning said books and records. [R. 35-52.] A temporary restraining order was granted by the District Court. [R. 86.]

Thereafter said appellee filed an application in the District Court to compel appellants to attend, testify and produce documentary evidence in obedience to said subpoenas. [R. 2-9.] These two actions were consolidated for hearing and they were jointly submitted. [R. 80, 87.]

All issues were submitted on the record and the hearing was held before the District Court on September 10, 1945. [R. 82.] On September 18, 1945, the District Court dismissed the appellant corporation's complaint for injunction, without leave to amend, dissolved the temporary restraining order and denied the injunction. [R. 74-79.] The application of appellee to compel appellants to attend, testify and produce documentary evidence in response to the subpoenas was granted [R. 80-82], and judgment to that effect was entered on October 10, 1945. [R. 91-93.]

The petitioners on October 13, 1945, duly appealed to the Circuit Court of Appeals for the Ninth Circuit. [R. 94-98.] Said Court by its judgment affirmed the judgment of the District Court. [R. 125-126.]

Specification of Errors.

The Circuit Court of Appeals erred in each of the following particulars:

1. In affirming the judgment of the District Court.
2. In Holding that the National War Labor Board had power to issue the subpoenas in question.
3. In holding that the enforced production of books and records of the Troy Laundry Company, petitioner herein, pursuant to the subpoena issued, would not be an unreasonable search and seizure of the books and records of said corporation within the inhibition of the Fourth Amendment to the Constitution of the United States.
4. In holding that the power of the National War Labor Board to issue subpoenas under the National War Labor Board Act could be and was lawfully transferred by Presidential Order to respondent W. Willard Wirtz, Chairman of the National Wage Stabilization Board of the Department of Labor.

Reasons Relied on for the Allowance of the Writ.

I.

The judgment of the District Court and the opinion and judgment of the Circuit Court of Appeals are concerned with the construction and enforcement of a Federal statute of general public importance, to wit: The Wage Stabilization Act, and the construction of another statute of general public importance, to wit: The War Labor Disputes Act, is also involved. Whether or not the National War Labor Board had the power to issue the subpoena in question, whether the District Court had the power to issue its order for the enforcement of said subpoena, and whether the President had power to transfer authority with regard to said subpoena from the National War Labor Board to the National Wage Stabilization Board, after abolition of the former Board, are all important questions of Federal law, which have not been, but should be, settled by this Court.

II.

The opinion and judgment of the Circuit Court of Appeals decided the Federal question, to wit: Whether the issuance and enforcement of the subpoena violated petitioners' rights under the Fourth Amendment to the Constitution of the United States, in such a way as to conflict with applicable and ruling decisions of the Supreme Court of the United States.

Gould v. United States, 255 U. S. 298, 65 L. Ed. 647, 650;

Silverthorne Lumber Co. v. United States, 251 U. S. 385, 64 L. Ed. 319.

III.

In its opinion and judgment, the Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the District Court, to the detriment of petitioners, as to call for an exercise of this Court's power of supervision.

Wherefore, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit directing that Court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, "No. 11169, Troy Laundry Company, a corporation, and F. R. Miller, Vice-President of Troy Laundry Company, appellants, vs. W. Willard Wirtz, Chairman of the National Wage Stabilization Board, appellee," and that the judgment of said Court therein be reversed by this Honorable Court and that your petitioners have such other and further relief in the premises as to this Honorable Court may seem meet and just.

CHARLES P. McCARTHY,
Attorney for Petitioners.

CARL M. GOULD,
Of Counsel for Petitioners.

Certificate of Counsel.

The undersigned, one of counsel for petitioners, hereby certifies that the above petition is in his opinion well founded and that the same is not interposed for delay.

CHARLES P. McCARTHY.

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vs.

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Respondent.

**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI.**

Opinions of the Courts below. The opinion of the District Court was not reported; however, the Court filed a typewritten opinion which is to be found at pages 80-82 of the record. The opinion of the Circuit Court of Appeals is to be found in the record at pages 116-124 and has not yet been reported in the Federal Reporter.

Jurisdiction.

The judgment of the District Court was entered on October 10, 1945. [R. 93.] The date of filing of opinion and entry of Decree of the Circuit Court of Appeals is March 27, 1946. [R. 124-125.] Petitioner on May 15,

1946, within the time as extended by order of said Court, filed a petition for rehearing in the Circuit Court of Appeals [R. 126] and said petition was denied by said Court on May 23, 1946. [R. 126.]

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925 (43 Stat., Chap. 220, Sec. (1); 28 U. S. C. A., Sec. 347, pp. 359-360).

Statement of the Case and Specification of Errors.

The statement and specification of errors found in the petition, supra, are hereby adopted herein to prevent needless repetition.

Summary of Argument.

I.

The Chairman of the National War Labor Board, and respondent as his successor, had no power to issue the subpoena, nor had the District Court any power to decree its enforcement.

II.

The issuance and enforcement of the subpoena constitute a violation of the petitioner's, Troy Laundry Company, rights under the Fourth Amendment to the Constitution of the United States.

III.

If the Chairman of the National War Labor Board had the authority to issue the subpoena, the President had no power to transfer such authority to respondent, as Chairman of the National Wage Stabilization Board.

ARGUMENT.

I.

The Chairman of the National War Labor Board, and Respondent as His Successor, Had No Power to Issue the Subpoena, nor Had the District Court Any Power to Decree Its Enforcement.

A. AN ADMINISTRATIVE AGENCY IS A STATUTORY BODY AND HAS NO POWER NOT SPECIFICALLY GIVEN IT BY THE LEGISLATURE.

Arrow-Hart & Hegeman Electric Company v. Federal Trade Commission, 291 U. S. 587, 54 S. Ct. 532, 78 L. Ed. 1007 at 1013;

Stark v. Wickard, 321 U. S. 288, 64 S. Ct. 559, 88 L. Ed. 733 at 748;

Federal Trade Commission v. Sinclair Refining Company, 261 U. S. 463, 53 S. Ct. 450, 67 L. Ed. 746 at 754;

Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U. S. 129, 56 S. Ct. 397, 80 L. Ed. 528;

Helvering v. Janney, 311 U. S. 189, 61 S. Ct. 241, 85 L. Ed. 118.

B. SPECIFICALLY AN ADMINISTRATIVE AGENCY HAS NO IMPLIED AUTHORITY TO ISSUE SUBPOENAS, BUT SUCH AUTHORITY DEPENDS UPON AN EXPRESS DELEGATION OF AUTHORITY BY ACT OF CONGRESS.

Shotkin v. Nelson (C. C. A. 10), 146 F. (2d) 402;
Bowles v. Abendroth (C. C. A. 9), 151 F. (2d) 407 at 408;

Lowell Sun Co. v. Fleming (C. C. A. 1), 120 F. (2d) 213, affd. in 315 U. S. 784, 62 S. Ct. 651, 86 L. Ed. 1190;

Janssen v. Belding-Corticelli Limited (C. C. A. 3), 84 F. (2d) 577.

C. MERE POWER TO INVESTIGATE OR MAKE INQUIRIES
DOES NOT IMPLY THE POWER TO ISSUE SUBPOENAS.

*Cudahy Packing Company of Louisiana, Ltd., v.
Holland*, 315 U. S. 357, 62 S. Ct. 653, 86 L. Ed.
895 at 899.

The following excerpts from the case last cited are apropos:

"The subpoena power differs materially in these respects from the power to gather data and make investigations which is expressly made delegable by §11. Without the subpoena that power is in effect a power of inspection at the employer's place of business to be exercised only on his consent. It is much less burdensome than the requirement of his selection of great numbers of books and papers and their production at other places. Because of these differences it seems to us fairly inferable that the grant of authority to delegate the power of inspection and the omission of authority to delegate the subpoena power show a legislative intention to withhold the latter. Moreover, if a subpoena power in the regional directors were to be implied from their delegated authority to investigate, we should have to say that Congress had no occasion expressly to grant the subpoena power to the Administrator, who also has the power to investigate, and that the grant to him was superfluous and without meaning or purpose.

"The entire history of the legislation controlling the use of subpoenas by administrative officers indicates a Congressional purpose not to authorize by

implication the delegation of the subpoena power. The Interstate Commerce Act, the National Labor Relations Act, and the Federal Trade Commission Act, whose subpoena provisions were adopted by the present Act and by the Packers and Stockyard Act all fail to grant authority to delegate the issuance of subpoenas. It appears that none of the agencies administering these acts has construed the authority of its head to include the power to delegate the signing and issuance of subpoenas. On the other hand, Congress, in numerous cases, has specifically authorized delegation of the subpoena power. In others it has granted the power to particularly designated subordinate officers or agents, thus negativing any implied power in the head to delegate generally to subordinates. * * *

"All this is persuasive of a Congressional purpose that the subpoena power shall be delegable only when an authority to delegate is expressly granted. * * *

"* * * Even though Congress has underestimated the burden which it has placed upon the Administrator, which is by no means clear, we think that the legislative record establishes that Congress has withheld from him authority to delegate the exercise of the subpoena power, and that this precludes our restoring it by construction."

See, also:

Federal Trade Commission v. Smith, 34 F. (2d) 323 at 325;

Panama Refining Co. v. Ryan, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446;

Securities and Exchange Commission v. Long Island Lighting Co. (C. C. A. 2), 148 F. (2d) 252 at 256.

D. CONTRARY TO THE VIEWS AND HOLDING OF THE CIRCUIT COURT OF APPEALS IN THE INSTANT CASE, THE ACTS OF CONGRESS UNDER WHICH THE NATIONAL WAR LABOR BOARD, AND RESPONDENT AS ITS SUCCESSOR, ARE FUNCTIONING DO NOT GRANT TO SAID BOARD, OR TO RESPONDENT AS ITS SUCCESSOR, THE AUTHORITY TO ISSUE SUBPOENAS.

By the Economic Stabilization Act of 1942, approved October 2, 1942, the President was authorized to issue a General Order stabilizing wages. It provides he may exercise any power or authority conferred upon him by this Act through such department, agency or office as he shall direct.

The Act does not confer upon the President the power to issue subpoenas or to delegate the power to anyone else to issue subpoenas. It is complete within itself. See the Act which is set forth in the appendix to this brief.

The President by Executive Order 9250 (7 F. R. 7871; 50 U. S. C., Sec. 901, note), dated October 3, 1942, designated the National War Labor Board as the agency to exercise the powers conferred upon him by the Economic Stabilization Act. He did not delegate to it the power to issue subpoenas. This he could not have done in any event, since he could by the terms of the Act delegate to the agency designated by him only the power and authority conferred upon him by the Act, and the power to issue subpoenas was not conferred upon him.

The War Labor Disputes Act, passed over the President's veto on June 25, 1943, was the first Act of Congress dealing with the subject of the War Labor Board and its powers. Theretofore said Board had functioned under Executive Order 9017 (7 F. R. 237; 50 U. S. C.

App., Sec. 1507, note), dated January 12, 1942. This Act was the first to give Congressional sanction to the appointment of said Board. Beginning with its title, and following through its every provision, the Congressional intent is clearly expressed that it relates only to business concerns and plants engaged in businesses which affect the prosecution of the war and the settlement of labor disputes in such plants which might affect the prosecution of the war. See this Act which is set forth in the appendix to this brief.

The Act itself in Section 7 defines the powers which the Board shall have under said Act. The introductory language of Section 7 (a) of the Act says that the Board shall have the powers mentioned in said section in addition to the powers conferred on it by the Emergency Price Control Act of 1942, and by any Executive Order or Regulation issued under the Economic Stabilization Act of 1942. It does not purport or pretend to amend the Economic Stabilization Act, or to add to or increase the powers which the President may exercise or delegate under said Act. It simply purports to invest the Board with certain powers in its exercise of jurisdiction created and conferred by the Congress for the first time in this Act.

Considering the said War Labor Disputes Act as a whole and its apparent purpose, it is clear that Section 7 thereof and the powers thereby conferred upon the Board, including the power to issue subpoenas, related only to its duties and jurisdiction in the settlement of war labor disputes. There is nothing in the record in this case which indicates that petitioner, Troy Laundry Company, was engaged in any industry or business which affected the war effort, nor that there was any labor dispute existing or threatened between it or any of its employees; on the

other hand, the record shows that the facts are contrariwise. [R. 20, 37.]

In its opinion in the instant case the Circuit Court of Appeals reasons that the provision of Section 7 (b) of said Act relating to the issuance of subpoenas does not relate to the usual and normal functions of the Board in regard to labor disputes, because that matter has already been covered by the provision of Section 7 (a) (3). The Court argues that the authority given by Section 7 (b) must relate to functions performed by the Board, not in its usual and normal role of the administrator of the War Labor Disputes Act, but to its functions performed as the administrative agency designated by the President to enforce the Economic Stabilization Act.

It is our contention that the rule of "*in pari materia*" applies in the instant case. See *U. S. v. Montgomery Ward & Co.* (C. C. A. 7), 150 F. (2d) 369 at 376. We submit that this rule applies, not only to different statutes relating to the same general subject, but also with particular force to different parts or provisions of the same statute relating to one common subject. All such parts of the statute should be read, considered and construed together and in the light of each other.

Section 7 (a) (3) deals generally with the question of the power of the Board to issue subpoenas. Section 7 (b) goes into detail in regard to the same matter, providing that the chairman shall issue the subpoenas and also providing the method by which they shall be enforced. Reading these two sections together, in the light of the Act and

its manifest purposes and objects, it is clear that in Section 7 (b) as well as in Section (a) (3) the Congress had in mind only the issuance of subpoenas by the Board in its role as the administrative agency to investigate labor disputes in industries affecting the war effort.

Attention is called to the fact also that Section 7 (3) refers to investigations by the Board and Section 7 (b) refers to inquiries and hearings before the Board. There is a judicially recognized distinction between "investigation" and "hearing."

See

Genecov v. Federal Petroleum Board (C. C. A. 5),
146 F. (2d) 596 at 598;

Bowles v. Baer (C. C. A. 7), 142 F. (2d) 787 at
787;

Woolley v. United States (C. C. A. 9), 97 F. (2d)
258, cert. den. 305 U. S. 614, 59 S. Ct. 73, 83
L. Ed. 391.

For the above reasons it is submitted that the provisions of Section 7 (b) are confined to the administration of the War Labor Disputes Act and do not confer upon the Board authority to issue subpoenas when acting as the agency designated by order of the President to enforce the provisions of the Economic Stabilization Act. On the contrary, its powers in the performance of the latter role are measured by the provisions of the Act which it is then enforcing. That Act contains no provision authorizing the administrative agency administering it to issue subpoenas.

II.

The Issuance and Enforcement of the Subpoena Constitute a Violation of the Petitioner's, Troy Laundry Company, Rights Under the Fourth Amendment to the Constitution of the United States.

- A. THE BOOKS AND RECORDS OF APPELLANTS ARE PRIVATE RECORDS AS DISTINCT FROM PUBLIC OR QUASI-PUBLIC RECORDS AND ARE PRIVILEGED AND ENTITLED TO PROTECTION UNDER THE PROVISIONS OF THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.
- B. THERE ARE NO PROVISIONS IN THE WAGE STABILIZATION ACT OR IN ANY EXECUTIVE ORDER OR REGULATIONS PROMULGATED PURSUANT THERETO WHICH REQUIRE THE KEEPING OF ANY PARTICULAR RECORDS AND THE RECORDS IN QUESTION ARE PRIVATE RECORDS, NOT PUBLIC OR QUASI-PUBLIC RECORDS.
- C. AS SUCH PRIVATE BOOKS AND RECORDS, THEY ARE ENTITLED TO PROTECTION OF THE FOURTH AMENDMENT AS AGAINST ILLEGAL SEARCH AND SEIZURE.

Boyd v. United States, 116 U. S. 616, 29 L. Ed. 746 at 747;

Ballmann v. Fagan, 200 U. S. 186, 26 S. Ct. 212, 50 L. Ed. 433;

Wilson v. United States, 221 U. S. 361, 31 S. Ct. 544, 55 L. Ed. 771.

D. THE PETITIONER, TROY LAUNDRY COMPANY, A CORPORATION, IS ENTITLED TO INVOKE THE GUARANTEE OF THE FOURTH AMENDMENT AGAINST UNREASONABLE SEARCHES AND SEIZURES TO THE SAME EXTENT AS A NATURAL PERSON.

Silverthorne Lumber Co. v. United States, 251 U. S. 385, 40 S. Ct. 182, 64 L. Ed. 319;

Hale v. Henel, 201 U. S. 43, 26 S. Ct. 370, 50 L. Ed. 652 at 655;

Essgee Company of China v. United States, 262 U. S. 151, 43 S. Ct. 514, 67 L. Ed. 917;

Weeks v. United States, 232 U. S. 383, 34 S. Ct. 341, 58 L. Ed. 652;

Oklahoma Press Publishing Co. v. Walling, U. S., 90 L. Ed. 436.

E. INFORMATION, ILLEGALLY OBTAINED, WAS USED AS BASIS FOR ISSUANCE OF SUBPOENA.

On August 21, 1944, an Inspector of the Department of Labor presented herself at the offices of appellant corporation and displayed only a personal card and no other kind of identification. [R. 34.] She stated she was from the Bureau of Labor Statistics. She was given the books and records of the company, but appellant did not know that she was obtaining information from the said books and records for the War Labor Board in connection with the Stabilization Act. [R. 34.] The instructions of the Inspector were to ascertain whether there was unauthorized payroll, but she did not tell the officer of the company that her inspection was for the purposes of making a wage

survey and to bring proceedings for alleged violations. She did not disclose her purpose. If the appellant Miller had known she was there to make a Stabilization inspection, he would not have permitted her access to the books. [R. 24, 34, 38.]

In view of the foregoing, it is respectfully submitted that this Court should hold that there was no consent to the examination of the appellant's corporation's books and that there was an illegal search and seizure.

In *Gouled v. United States*, 255 U. S. 298, 65 L. Ed. 647, 650, the first question related to the admission in evidence of a paper surreptitiously taken from the office of the defendant by one acting under direction of officers of the Intelligence Department of the Army of the United States. The Court held that this action fell within the scope of the prohibition of the Fourth Amendment, Mr. Justice Clark saying:

“The prohibition of the 4th Amendment is against all unreasonable searches and seizures; and if for a government officer to obtain entrance to a man's house or office by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private papers, would be an unreasonable, and therefore a prohibited, search and seizure, as it certainly would be, it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth instead of by force or coercion. The security and privacy of the home or office and of the papers

of the owner would be as much invaded, and the search and seizure would be as much against his will in the one case as in the other; and it must therefore be regarded as equally in violation of his constitutional rights.

"* * * whether entrance to the home or office of a person suspected of crime be obtained by a representative of any branch or subdivision of the government of the United States by stealth, or through social acquaintance, or in the guise of a business call, and whether the owner be present or not when he enters, any search and seizure subsequently and secretly made in his absence falls within the scope of the prohibition of the 4th Amendment, and therefore the answer to the first question must be in the affirmative."

In *United States v. Marra*, 40 F. (2d) 271, officers of the Government presented themselves at the door and said that they were prohibition officers and were going to inspect the premises. Defendant replied, "All right." The Court held that this might be construed to be an acquiescence, but under the circumstances did not amount to an invitation to enter and search.

In *Marion v. United States* (C. C. A. 9), 8 F. (2d) 250, it was held that, when the information sought to be used against the defendant was obtained by a misleading subterfuge on the part of the officers, the rights of the defendant under the Fourth Amendment were violated, and the evidence obtained could not be used against him.

Oklahoma Press Publishing Company v. Walling, U. S., 90 L. Ed. 436, relied upon by the Circuit Court below in its decision, makes the distinction between an "actual" search and seizure and a "figurative" or "constructive" search and seizure. The uncontradicted facts of the instant case prove that there was an actual, unreasonable search and seizure of the books and records of petitioner Troy Laundry Company.

The facts in the instant case lead to only one conclusion, namely, that there was no voluntary consent to this investigation by the agents of the appellee. There was no knowledge of the purpose of the investigation and consequently mere acquiescence, not amounting to consent, and the information in question was obtained by a misleading subterfuge.

The information obtained by the Inspector in this illegal manner was used as the basis for the issuance of the subpoenas by the appellee. Appellee properly objected to the use of this testimony. [R. 28.] It is therefore submitted that this illegally obtained evidence may not be used by the United States of America or any of its agents for any purpose whatsoever against the appellant, including the use as a basis for the issuance of the subpoenas under consideration.

Silverthorne Lumber Co. v. United States, 251 U. S. 385, 64 L. Ed. 319.

III.

If the Chairman of the National War Labor Board Had the Authority to Issue the Subpoena, the President Had No Power to Transfer Such Authority to Respondent, as Chairman of the National Wage Stabilization Board.

If the Court should be of the opinion that the National War Labor Board had power to issue subpoenas while administering the Economic Stabilization Act because of the provisions of Section 7 (b) of the War Labor Disputes Act, it does not follow that the President, when he abolished the National War Labor Board by Presidential Order, and transferred the duty of administering the Economic Stabilization Act to the chairman of the National Wage Stabilization Board, had any authority to transfer to the latter the power to issue subpoenas.

Congress has empowered only one agency, the National War Labor Board, to issue subpoenas pursuant to the War Labor Disputes Act. Said Act contains no language whatsoever authorizing the President to delegate to any other agency the power to issue subpoenas. Only Congress has the power to legislate, and the power to issue the subpoena is controlled by the express terms of the War Labor Disputes Act. The transfer of authority to issue subpoenas could be valid only if ratified by Congress, and Congress has not so done.

The first War Powers Act empowers the President to redistribute the "functions, duties and powers" of executive agencies. However, the subpoena power is one that

is jealously guarded by Congress since it invades the privacy of the individual, and Congress must expressly provide for transfer and delegation of the subpoena power.

Cudahy Packing Co. v. Holland, 315 U. S. 357, 62 S. Ct. 653, 86 L. Ed. 895.

There must be express subpoena power in a statute. Therefore, the attempted transfer of this power to the Wage Stabilization Board is invalid.

Conclusion.

For the reasons given above, we contend it is clear that neither the chairman of the War Labor Board, nor respondent Wirtz, chairman of the National Wage Stabilization Board, who has been designated by the President in place of the chairman of the National War Labor Board as the administrative agency to administer the Economic Stabilization Act, had any power to issue the subpoena in the instant case, and the District Court had no power or authority to order the enforcement of said subpoena. We submit that the decision and judgment of the Circuit Court of Appeals to the contrary is incorrect and contrary to law; and that the problem thereby presented raises important questions of federal law under the Wage Stabilization Act and the War Labor Disputes Act, which have not been, but should be, settled by this Court. We also contend that the issuance and enforcement of the subpoena constitute a violation of the rights of petitioner Troy Laundry Company under the Fourth Amendment to the Constitution of the United States, and that the

judgment of the Circuit Court of Appeals to the contrary is in conflict with applicable and ruling decisions of the Supreme Court of the United States, as above pointed out.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of supervisory powers, that a Writ of Certiorari should be granted, and this Court should review the decision of the Circuit Court of Appeals and finally reverse it.

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APPENDIX.

Economic Stabilization Act of 1942.

Act of Oct. 2, 1942 (56 Stat. 765), as amended Apr. 10, 1943, by Public Debt Act of 1943 (57 Stat. 63); June 30, 1944, by Stabilization Extension Act of 1944 (58 Stat. 642); and June 29, 1945, by Public Law No. 108, 79th Congress (50 U. S. C. App. 961-971).

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3. Prices of agricultural commodities.
4. Limitations on actions with respect to wages and salaries.
5. Control of wages and salaries; limitation or prohibition of payment of doubletime.
6. Termination date of Act.
7. Amendment and extension of Emergency Price Control Act of 1942.
8. Loans on agricultural commodities.
9. Amendment of Agricultural Credit Commodity Act of 1941.
10. Definition of "wages" and "salaries."
11. Penalties.
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AN ACT

To Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That in order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respects to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: Provided, that no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State or municipal authority having jurisdiction to consider such increase.

(Regulations of President; Delegation of Authority; Suspension of Provisions of Emergency Price Control Act of 1942.)

Section 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by

this Act through such department, agency, or officer as he shall direct. The President may suspend the provisions of Section 3 (a) and 3 (c) and Clause (1) of Section 302 (c) of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof.

(Prices of Agricultural Commodities.)

Section 3. No maximum price shall be established or maintained for any agricultural commodity under authority of this Act or otherwise below a price which will reflect to producers or agricultural commodities the higher of the following prices, as determined and published by the Secretary of Agriculture—

(1) The parity price for such commodity (adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials) or, in case a comparable price has been determined for such commodity under and in accordance with the provisions of Section 3 (b) of the Emergency Price Control Act of 1942, such comparable price (adjusted in the same manner), or

(2) The highest price received by such producers for such commodity between January 1, 1942, and September 15, 1942 (adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials), or, if the market for such commodity was inactive during the latter half of such period, a price for the commodity determined by the Secretary of Agriculture to be in line with the prices, during such period, of other agricultural commodities produced for the same general use;

* * * and no maximum price shall be established or maintained under authority of this Act or otherwise for

any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to the producers of such agricultural commodity a price therefor equal to the higher of the prices specified in Clauses (1) and (2) of this Section: Provided, That the President shall without regard to the limitation contained in Clause (2), adjust any such maximum price to the extent that he finds necessary to correct gross inequities; but nothing in this Section shall be construed to permit the establishment in any case of a maximum price below a price which will reflect to the producers of any agricultural commodity the price therefor specified in Clause (1) of this Section: Provided further, that modifications shall be made in maximum prices established for any agricultural commodity and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, under regulations to be prescribed by the President, in any case where it appears that such modification is necessary to increase the production of such commodity for war purposes, or where by reason of increased labor or other costs to the producers of such agricultural commodity incurred since January 1, 1941, the maximum prices so established will not reflect such increased costs: Provided further, That in the fixing of maximum prices on products resulting from the processing of agricultural commodities, including livestock, a generally fair and equitable margin shall be allowed for such processing: Provided further, That in fixing price maximums for agricultural commodities and for commodities processed or manufactured in whole or substantial part from any agricultural commodity, as provided for by this Act, adequate weighing shall be given to farm labor.

On and after the date of the enactment of this paragraph, it shall be unlawful to establish or maintain any maximum price for any agricultural commodity or any commodity or any commodity processed or manufactured in whole or substantial part from any agricultural commodity which will reflect to the producers of such agricultural commodity a price below the highest applicable price standard (applied separately to each major item in the case of products made in whole or major part from cotton or cotton yarn) of this Act.

The President, acting through any department, agency, or office of the Government, shall take all lawful action to assure that the farm producers of any of the basic agricultural commodities (cotton, corn, wheat, rice, tobacco, and peanuts) and of any agricultural commodity with respect to which a public announcement has been made under Section 4 (a) of the Act entitled "An Act to extend the life and increase the credit resources of the Commodity Credit Corporation and for other purposes," approved July 1, 1941, as amended (relating to supporting the prices of nonbasic agricultural commodities) receives not less than the higher of the two prices specified in Clauses (1) and (2) of this Section (the latter price as adjusted for gross inequity).

The method that is now used for the purposes of loans under Section 8 of this Act for determining the parity price or its equivalent for seven-eighths inch Middling cotton at the average location used in fixing the base loan rate for cotton shall also be used for determining the parity price for seven-eighths inch Middling cotton at such average location for the purposes of this Section; and any adjustments made by the Secretary of Agriculture or the War Food Administrator for grade, location,

or seasonal differentials for the purposes of this Section shall be made on the basis of the parity price so determined.

(Limitations on Actions With Respect to Wages and Salaries.)

Section 4. No action shall be taken under authority of this Act with respect to wages or salaries (1) which is inconsistent with the provisions of the Fair Labor Standards Act of 1938, as amended, or the National Labor Relations Act or (2) for the purpose of reducing the wages or salaries for any particular work below the highest wages or salaries paid therefor between January 1, 1942, and September 15, 1942.

(b) (1) Section 7 of Title II, and all other provisions of Executive Order numbered 9250, "Providing for the stabilization of the national economy," issued October 3, 1942, and all provisions of Regulation numbered 4001.9, promulgated by the Economic Stabilization Director on October 27, 1942, which are in conflict with this Section are hereby rescinded; and (2) all orders, regulations and other directives, and all decisions, promulgated or made by virtue of the said Executive Order or regulation which are in conflict with this Section are hereby rescinded.

In any dispute between employees and carriers subject to the Railway Labor Act, as amended, as to changes affecting wage or salary payments, the procedures of such Act shall be followed for the purpose of bringing about a settlement of such dispute. Any agency provided for by such Act, as a prerequisite to effecting or recommending a settlement of any such dispute, shall make a specific finding and certification that the changes proposed by such settlement or recommended settlement are consistent with

such standards as may be then in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies. Where such finding and certification are made by such agency they shall be conclusive, and it shall be lawful for the employees and carriers, by agreement, to put into effect the changes proposed by the settlement or recommended settlement with respect to which such finding and certification were made.

(Control of Wages and Salaries; Limitation or Prohibition of Payment of Doubletime.)

Section 5. (a) No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act. The President shall also prescribe the extent to which any wage or salary payment made in contravention of such regulations shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

(b) Nothing in this Act shall be construed to prevent the reduction by any private employer of the salary of any of his employees which is at the rate of \$5,000 or more per annum.

(c) The President shall have power by regulation to limit or prohibit the payment of doubletime except when, because of emergency conditions, an employee is required to work for seven consecutive days in any regularly scheduled workweek.

(Termination Date of Act.)

Section 6. The provisions of this Act (except Sections 8 and 9), and all regulations thereunder, shall terminate

on June 30, 1946, or on such earlier date as the Congress by concurrent resolution, or the President by proclamation, may prescribe.

(Amendment and Extension of Emergency Price Control Act of 1942.)

Section 7. (a) Section 1 (b), as amended, of the Emergency Price Control Act of 1942 is hereby amended by striking out "June 30, 1945" and substituting "June 30, 1946."

(b) All provisions (including prohibitions and penalties) of the Emergency Price Control Act of 1942 which are applicable with respect to orders or regulations under such Act shall, insofar as they are not inconsistent with the provisions of this Act, be applicable in the same manner and for the same purposes with respect to regulations or orders issued by the Price Administrator in the exercise of any functions which may be delegated to him under authority of this Act.

(c) Nothing in this Act shall be construed to invalidate any provision of the Emergency Price Control Act of 1942 (except to the extent that such provisions are suspended under authority of Section 2) or to invalidate any regulation, price schedule, or order issued or effective under such Act.

(Loans on Agricultural Commodities.)

Section 8. (a) The Commodity Credit Corporation is authorized and directed to make available upon any crop of the commodities cotton, corn, wheat, rice, tobacco, and peanuts harvested after December 31, 1941, and before the expiration of the two-year period beginning with the 1st day of January immediately following the date upon

which the President by proclamation or the Congress by concurrent resolution declares that hostilities in the present war have terminated, if producers have not disapproved marketing quotas for such commodity for the marketing year beginning in the calendar year in which such crop is harvested, loans as follows:

1. To cooperators (except cooperators outside the commercial corn-producing area, in the case of corn) at the rate in the case of cotton of 92½ per centum, and at the rate in the case of other commodities of 9 per centum of the parity price for the commodity as of the beginning of the marketing year;

(2) To cooperators outside the commercial corn-producing area, in the case of corn, at the rate of 75 per centum of the rate specified in (1) above;

(3) To noncooperators (except noncooperators outside the commercial corn-producing area, in the case of corn) at the rate of 60 per centum of the rate specified in (1) above and only on so much of the commodity as would be subject to penalty if marketed.

(b) All provisions of law applicable with respect to loans under the Agricultural Adjustment Act of 1938, as amended, shall, insofar as they are not inconsistent with the provisions of this Section, be applicable with respect to loans made under this section.

(c) In the case of any commodity with respect to which loans may be made at the rate provided in Paragraph (1) of Subsection (a), the President may fix the loan rate at any rate not less than the loan rate otherwise provided by law if he determines that the loan rate so fixed is necessary to prevent an increase in the cost of feed for livestock and poultry and to aid in the effective prosecution of the war.

(Amendment of Agricultural Credit Commodity Act of 1941.)

Section 9. (a) Section 4 (a) of the Act entitled "An Act to extend the life and increase the credit resources of the Commodity Credit Corporation, and for other purposes," approved July 1, 1941 (U. S. C., 1940 edition, Supp. I, Title 15, Sec. 713a-8, is amended—

(1) By inserting after the words "so as to support" a comma and the following: "during the continuance of the present war and until the expiration of the two-year period beginning with the 1st day of January immediately following the date upon which the President by Proclamation or the Congress by concurrent resolution declares that hostilities in the present war have terminated."

(2) By striking out "85 per centum" and inserting in lieu thereof "90 per centum."

(3) By inserting after the word "tobacco" a comma and the word "peanuts."

(b) The amendments made by this Section shall, irrespective of whether or not there is any further public announcement under such Section 4 (a), be applicable with respect to any commodity with respect to which a public announcement has heretofore been made under such Section 4(a).

(Definition of "Wages" and "Salaries.")

Section 10. When used in this Act, the terms "Wages" and "Salaries" shall include additional compensation, on an annual or other basis, paid to employees by their em-

ployers for personal services (excluding insurance and pension benefits in a reasonable amount to be determined by the President); but for the purpose of determining wages or salaries for any period prior to September 16, 1942, such additional compensation shall be taken into account only in cases where it has been customarily paid by employers to their employees.

(Penalties.)

Section 11. Any individual, corporation, partnership, or association willfully violating any provision of this Act, or any regulation promulgated thereunder, shall, upon conviction thereof, be subject to a fine of not more than \$1,000, or to imprisonment for not more than one year, or to both such fine and imprisonment.

(Short Title.)

Section 12. This Act may be cited as the "Stabilization Act of 1942."

Approved, October 2, 1942.

Text of War Labor Disputes Act.

57 Stat. 163 (50 U. S. C. App. Secs. 1501-1511)

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6. Interference with Government Operation of Plants
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8. Notice of Threatened interruptions in War Production, Etc.
9. Political Contributions by Labor Organizations
10. Termination of Act
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AN ACT

Relating to the Use and Operation by the United States of Certain Plants, Mines, and Facilities in the Prosecution of the War, and Preventing Strikes, Lockouts, and Stoppages of Production, and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,

That this Act may be cited as the "War Labor Disputes Act."

DEFINITIONS

Section 2. As used in this act—

- (a) The term "Person" means an individual, partnership, association, corporation, business trust, or any organized group of persons.
- (b) The term "war contract" means—
 - (1) A contract with the United States entered into on behalf of the United States by an officer or employee of the Department of War, the Department of the Navy, or the United States Maritime Commission;
 - (2) a contract with the United States entered into by the United States pursuant to an Act entitled "An Act to promote the defense of the United States";
 - (3) a contract, whether or not with the United States for the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of—
 - (A) any weapon, munition, aircraft, vessel, or boat;
 - (B) any building, structure or facility;
 - (C) any machinery, tool, material, supply, article, or commodity; or
 - (D) any component material or part of or equipment for any article described in subparagraph (A), (B), or (C);

the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of which by the contractor in question is found by the President as being contracted for in the prosecution of the war.

(c) The term "war contractor" means the person producing, manufacturing, constructing, reconstructing, installing, maintaining, storing, repairing, mining, or transporting under a war contract or a person whose plant, mine, or facility is equipped for the manufacture, production, or mining of any articles or materials which may be required in the prosecution of the war or which may be useful in connection therewith; but such term shall not include a carrier, as defined in title I of the Railway Labor Act, or a carrier by air subject to title II of such Act.

(d) The terms "employer", "employee", "representative", "labor organization", and "labor dispute" shall have the same meaning as in Section 2 of the National Labor Relations Act.

POWER OF PRESIDENT TO TAKE POSSESSION OF PLANTS.

Section 3. Section 9 of the Selective Training and Service Act of 1940 is hereby amended by adding at the end thereof the following new paragraph:

"The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised

with respect to any such plant, mine, or facility whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: Provided, that whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lockout, threatened strike, threatened lockout, work stoppage, or other cause, such plant, mine, or facility shall be returned to the owner thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to the taking of possession thereof. Provided further, that possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

TERMS OF EMPLOYMENT AT GOVERNMENT-OPERATED PLANTS

Section 4. Except as provided in section 5 hereof, in any case in which possession of any plant, mine, or facility has been or shall be hereafter taken under the authority granted by section 9 of the Selective Training and Service Act of 1940, as amended, such plant, mine, or facility, while so possessed, shall be operated under the

terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

**APPLICATION TO WAR LABOR BOARD FOR CHANGE IN
TERMS OF EMPLOYMENT AT GOVERNMENT-OPER-
ATED PLANTS.**

Section 5. When possession of any plant, mine or facility has been or shall be hereafter taken under authority of Section 9 of the Selective Training and Service Act of 1940, as amended, the Government agency operating such plant, mine, or facility or a majority of the employees of such plant, mine, or facility or their representatives, may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine, or facility. Upon receipt of any such application, and after such hearings and investigations as it deems necessary, such Board may order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder. Any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such plant, mine, or facility.

**INTERFERENCE WITH GOVERNMENT OPERATION OF
PLANTS**

Section 6. (a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lockout, strike, slowdown, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid

in any such lockout, strike, slowdown, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than \$5,000, or to imprisonment for not more than one year, or both.

FUNCTIONS AND DUTIES OF THE NATIONAL WAR LABOR BOARD

Section 7. (a) The National War Labor Board (hereinafter in this section called the "Board"), established by Executive Order Numbered 9017, dated January 12, 1942, in addition to all powers conferred on it by section 1(a) of the Emergency Price Control Act of 1942, and by any Executive Order or regulation issued under the provisions of the Act of October 2, 1942, entitled "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes," and by any other statute, shall have the following powers and duties:

(1) Whenever the United States Conciliation Service (hereinafter called the "Conciliation Service") certifies that a labor dispute exists which may lead to substantial interference with the war effort and cannot be settled

by collective bargaining or conciliation, to summon both parties to such dispute before it and conduct a public hearing on the merits of the dispute. If in the opinion of the Board a labor dispute has become so serious that it may lead to substantial interference with the war effort, the Board may take such action on its own motion. At such hearing both parties shall be given full notice and opportunity to be heard, but the failure of either party to appear shall not deprive the Board of jurisdiction to proceed to a hearing and order.

(2) To decide the dispute, and provide by order the wages and hours and all other terms and conditions (customarily included in collective-bargaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board. In making any such decision the Board shall conform to the provisions of the Fair Labor Standards Act of 1938, as amended; the National Labor Relations Act; the Emergency Price Control Act of 1942, as amended, and all other applicable provisions of law; and where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all the circumstances of the case.

(3) To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute and to issue subpoenas requiring such attendance or production.

(4) To apply to any Federal district court for an order requiring any person within its jurisdiction to obey a subpoena issued by the Board; and jurisdiction is hereby conferred on any such court to issue such an order.

(b) The Board, by its Chairman, shall have power to issue subpoenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof. Such subpoenas shall be enforceable in the same manner, and subject to the same penalties, as subpoenas issued by the President under Title III of the Second War Powers Act, approved March 27, 1942.

(c) No member of the Board shall be permitted to participate in any decision in which such member has a direct interest as an officer, employee, or representative of either party to the dispute.

(d) Subsections (a) (1) and (2) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(e) The Board shall not have any powers under this section with respect to any matter within the purview of the Railway Labor Act, as amended.

NOTICE OF THREATENED INTERRUPTIONS IN WAR PRODUCTION, ETC.

Section 8. (a) In order that the President may be apprised of labor disputes which threaten seriously to interrupt war production, and in order that employees may have an opportunity to express themselves, free from restraint or coercion, as to whether they will permit such interruptions in wartime—

(1) The representative of the employees of a war contractor, shall give to the Secretary of Labor, the National War Labor Board, and the National Labor Relations Board, notice of any such labor dispute involving

such contractor and employees, together with a statement of the issues giving rise thereto.

(2) For not less than thirty days after any notice under paragraph (1) is given, the contractor and his employees shall continue production under all the conditions which prevailed when such dispute arose, except as they may be modified by mutual agreement or by decision of the National War Labor Board.

(3) On the thirtieth day after notice under paragraph (1) is given by the representative of the employees, unless such dispute has been settled, the National Labor Relations Board shall forthwith take a secret ballot of the employees in the plant, plants, mine, mines, facility, facilities, bargaining unit, or bargaining units, as the case may be, with respect to which the dispute is applicable on the question whether they will permit any such interruption of war production. The National Labor Relations Board shall include on the ballot a concise statement of the major issues involved in the dispute and of the efforts being made and the facilities being utilized for the settlement of such dispute. The National Labor Relations Board shall by order forthwith certify the results of such balloting, and such results shall be open to public inspection. The National Labor Relations Board may provide for preparing such ballot and distributing it to the employees at any time after such notice has been given.

(b) Subsection (a) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(c) Any person who is under a duty to perform any act required under subsection (a) and who wilfully fails or refuses to perform such act shall be liable for damages resulting from such failure or refusal to any person in-

jured thereby and to the United States if so injured. The district courts of the United States shall have jurisdiction to hear and determine any proceedings instituted pursuant to this subsection in the same manner and to the same extent as in the case of proceedings instituted under section 24(14) of the Judicial Code.

POLITICAL CONTRIBUTIONS BY LABOR ORGANIZATIONS.

Section 9. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251), is amended to read as follows:

“Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political officer, or for any corporation whatever, or any labor organization to make a contribution in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution in violation of this section shall be fined not more than \$5,000, and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. For the purposes of this section ‘labor organization’ shall have the same meaning as under the National Labor Relations Act.”

TERMINATION OF ACT.

Section 10. Except as to offenses committed prior to such date, the provisions of this Act and the amendments made by this Act shall cease to be effective at the end of six months following the termination of hostilities in the present war, as proclaimed by the President, or upon the date (prior to the date of such proclamation) of the passage of a concurrent resolution of the two Houses of Congress stating that such provisions and amendments shall cease to be effective.

SEPARABILITY.

Section 11. If any provision of this Act or of any amendment made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and of such amendments, and the application of such provision to other persons or circumstances, shall not be effected thereby.

Passed over President's veto on June 25, 1943.

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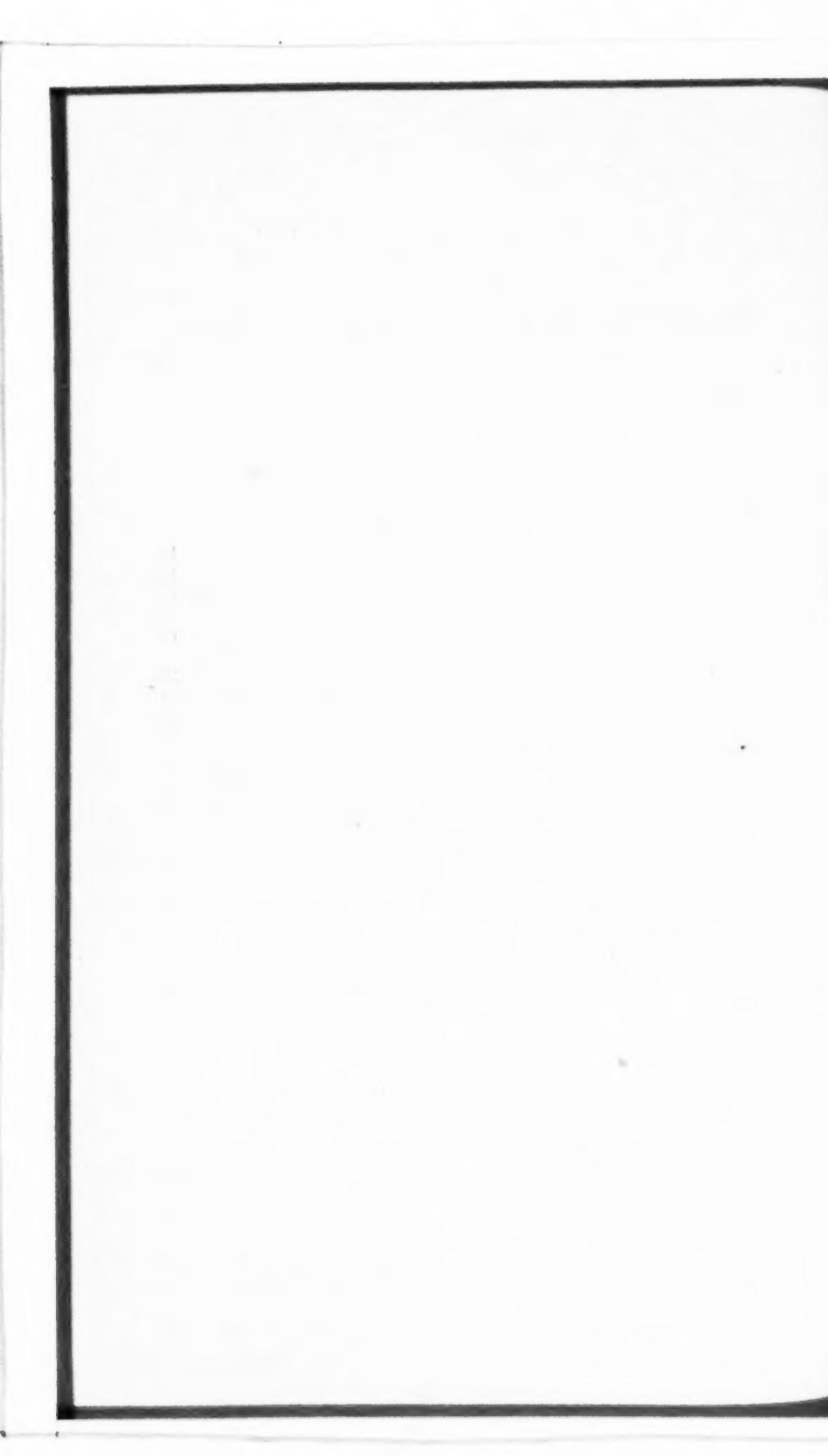
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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 228

TROY LAUNDRY COMPANY, A CORPORATION, AND F.
R. MILLER, VICE PRESIDENT OF TROY LAUNDRY
COMPANY, PETITIONERS

v.

W. WILLARD WIRTZ, CHAIRMAN OF THE NATIONAL
WAGE STABILIZATION BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for the Southern District of California, Central Division (R. 80-82) is not reported. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit (R. 116-124) is reported at 155 F. 2d 53.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 27, 1946 (R. 124-125).

(1)

The order of the Circuit Court of Appeals denying petitioners' application for rehearing was entered on May 23, 1946 (R. 126). The petition for a writ of certiorari was filed on June 24, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the courts below properly enforced compliance by petitioners with a subpoena and a subpoena *duces tecum* issued under Section 7 (b) of the War Labor Disputes Act by the chairman of the National War Labor Board in connection with a hearing before the Enforcement Division of the Tenth Regional War Labor Board held to determine whether petitioner corporation had violated or was violating the Stabilization Act of 1942.

STATUTES AND EXECUTIVE ORDERS INVOLVED

The relevant portions of the statutes and executive orders involved are set forth in the Appendix, pp. 18-27.

STATEMENT

Petitioner, Troy Laundry Company, is a corporation doing business in Los Angeles, California (R. 3-4, 35-37, 49, 83). Petitioner Miller is the Vice President of the Company (R. 2, 4, 15, 17-18, 36, 83). In 1944 the appropriate officer of the

Tenth Regional War Labor Board,¹ pursuant to the Stabilization Act of 1942, 56 Stat. 765, 50 U. S. C. App., Supp. V, § 961 *et seq.*, *infra*, pp. 20-21, Executive Order 9250, 7 F. R. 7871, *infra*, p. 25, and the regulations of the Director of the Office of Economic Stabilization, instituted an investigation to determine whether petitioner corporation had violated the Stabilization Act (R. 4, 58-59, 84). In the course of that investigation, an inspector of the Wage and Hour Division of the Department of Labor, with the permission of petitioner corporation, examined its payroll records (R. 4, 34-35, 38, 59, 84). On April 17 and 18, 1945, a hearing was held before the Enforcement Division² of the Tenth Regional War Labor Board at which petitioner corporation refused the unanimous request of the Enforcement Division that its books, papers, and records be produced for the scrutiny of the Division (R. 4-5, 14, 38-39,

¹ The National War Labor Board, under a decentralization program, created the Regional War Labor Boards and delegated certain work to them. Among the work so delegated was the handling of cases involving enforcement of the Stabilization Act of 1942, 56 Stat. 765, 50 U. S. C. App., Supp. V, § 961 *et seq.* (R. 55, 62-72; see National War Labor Board Release B 357, December 24, 1942, 1A Commerce Clearing House, *Labor Law Service*, pp. 14510-14511; National War Labor Board Release B 396, January 21, 1943, *id.*, pp. 14512-14514; *id.*, p. 10,029-29A). This area within the jurisdiction of the Tenth Regional War Labor Board included the State of California.

² "Composed of one member representing industry, one representing labor, and one representing the public" (R. 14, 55, 63-64, 71-72).

59, 84). The Enforcement Division thereupon unanimously directed the attorney for the Regional Board to request the National War Labor Board to issue a subpoena *duces tecum* to petitioner corporation to produce its books and records before the Division (R. 5, 40, 52, 59, 84). Thereafter, on May 23, 1945, George W. Taylor, Chairman of the National War Labor Board, "having reasonable cause to believe that the [petitioner] corporation has been and is violating the provisions of the Wage Stabilization Act of 1942 and the Order and Regulations issued thereunder," issued a subpoena and a subpoena *duces tecum* directed to petitioners, requiring them to appear before the Enforcement Division of the Tenth Regional War Labor Board on June 19, 1945, and requiring them further to bring with them

Books, payroll records, ledger sheets, journals, Social Security reports and records, time cards, and any written books and papers kept or maintained by said establishment wherein and whereby there is shown: (1) the payment or payments of wages and salaries by said corporation for the period commencing six months previous to October 3, 1942, and continuing until April 17, 1945, (2) the classifications in existence in said establishment during said period between the date six months prior to October 3, 1942, and April 17, 1945, (3) the wages and salaries paid by said company to persons in its employ be-

tween October 3, 1942, and April 17, 1945, at rates in excess of those paid by said company for particular classifications on and prior to October 3, 1942, (4) the total payroll of persons employed between October 3, 1942, and April 17, 1945, in

certain stated work classifications "at rates in excess of those * * * indicated" (R. 5, 9-12, 14-15, 46-48, 54, 59-60, 84-85). The subpoenas were duly served upon petitioners (R. 5, 84-85). Petitioners did not comply with the subpoenas, but, on June 15, 1945, petitioner corporation brought suit in the district court to restrain petitioner Miller from producing the books and records sought by the subpoena, to restrain him from testifying before the Enforcement Division of the Tenth Regional War Labor Board, and to restrain the Division from holding further hearings concerning said books and records (R. 6, 35-45, 52, 60, 86).³

³ In the injunction suit thus begun, the district court issued a temporary restraining order (R. 86). On July 27, 1945, the defendants in the injunction suit who were members of the Enforcement Division of the Tenth Regional War Labor Board moved to dismiss that suit (R. 53). Thereafter, following the institution of the instant proceeding on August 20, 1945 (R. 2-12), the district court ordered the two actions to be heard together (R. 86-87). On September 18, 1945, the court dissolved the temporary restraining order, refused to issue an injunction, and dismissed petitioner corporation's "amended complaint for injunction" (R. 35-45) "without leave to amend" (R. 74-79, 87). Petitioners did not appeal from these orders of the district court and did not further prosecute the injunction suit. The questions raised in that suit are accordingly no longer in issue.

On August 20, 1945, the Chairman of the National War Labor Board applied to the district court for an order enforcing the subpoenas theretofore issued by him (R. 2-12). Petitioners opposed the application (R. 17-32), denying the authority of the Chairman of the National War Labor Board to issue the subpoenas and denying the authority of the Board, its members, and agents to investigate petitioners' compliance with the Wage Stabilization Act of 1942. On October 9, 1945, the district court issued its findings of fact (R. 82-87) and conclusions of law (R. 88-91) and entered its decree enforcing compliance with the subpoenas (R. 91-93). The district court found that petitioner corporation had refused the unanimous request of the Enforcement Division of the Tenth Regional War Labor Board that it produce its books and records (R. 84, 86); that the Chairman of the National War Labor Board issued the subpoenas "having reasonable cause to believe that the [petitioner] corporation had been and is violating the provisions of the Wage Stabilization Act of 1942 and the Order and Regulations issued thereunder" (R. 84); that the subpoenas were duly served (R. 84-85); that petitioners at no time questioned their "sufficiency, definiteness or form" (R. 85, 81); that the wages paid by petitioner corporation to its employees "affect the cost of living" (R. 85); that the books and papers sought to be reached by the subpoenas were "and now are relevant material and necessary and appropriate" to determine whether peti-

titioner had violated the Stabilization Act (R. 85-86); and that petitioners' refusal to appear before the Enforcement Division of the Tenth Regional War Labor Board with the requested books and papers impeded the progress of the investigation being conducted pursuant to the Stabilization Act and the orders and regulations thereunder (R. 87). The district court concluded that Section 7 of the War Labor Disputes Act, 57 Stat. 166, 50 U. S. C. App., Supp. V, § 1507, *infra*, pp. 21-23, authorizes the Chairman of the National War Labor Board to issue the subpoenas and that, by virtue of that section, the subpoenas could be enforced by the court pursuant to Title III of the Second War Powers Act, 1942 (Act of March 27, 1942, c. 199, 56 Stat. 176, 177, 50 U. S. C. App., Supp. V, § 633, *infra*, pp. 18-20, R. 88); that the subpoenas were "valid" and "sufficient, definite and in proper form" (R. 88); that petitioner corporation "is within the probable jurisdiction of the National War Labor Board in connection with the Board's responsibilities under the Stabilization Act of 1942" (R. 89); and that the Regional War Labor Board had the power to determine whether wage or salary payments had been made in violation thereof (R. 89).

On appeal (R. 94), the court below affirmed the judgment of the district court (R. 124-125).⁴

⁴ On February 18, 1946, the court below, on motion of respondent, W. Willard Wirtz, Chairman of the National Wage Stabilization Board, ordered him substituted as a party in lieu of George Taylor, Chairman of the National War Labor Board (R. 114-115).

ARGUMENT

The court below held that a "succession of statutes and orders explicitly confers the subpoena power in the Board for its inquiry to determine the existence of wage overpayments" (R. 122), and accordingly affirmed the judgment of the district court which required petitioners to comply with the subpoenas (R. 89-93, 124-125). The court below rejected petitioners' contentions that there were constitutional objections to the exercise of the subpoena power thus conferred (R. 122-123) and held further that the "termination" of the National War Labor Board on December 31, 1945, by Executive Order 9672, 11 F. R. 221, *infra*, pp. 25-27, did not result in the loss of the power "to issue subpoenas in inquiries respecting wages" but that the power and duty to issue such subpoenas was "a function * * * transferred to the National Wage Stabilization Board" of which respondent is Chairman (R. 123-124). The decision below is clearly correct in each of its aspects.

1. The subpoenas were lawfully issued and were properly enforced by the district court. Under the Stabilization Act of October 2, 1942, 56 Stat. 765, 50 U. S. C. App., Supp. V, § 961, *et seq.*, the President was "authorized and directed * * * to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living" (*infra*, p. 20), and to exercise such power and authority "through such department, agency, or officer as he shall direct." 50 U. S. C. App. V, § 962;

infra, p. 20. Employers were prohibited from paying and employees from receiving "wages or salaries in contravention of the regulations promulgated by the President" who was directed to "prescribe the extent" to which any improper wage or salary payment should be "disregarded" by the various governmental agencies "in determining the costs or expenses of any employer for the purposes of any other law or regulation." 50 U. S. C. App., Supp. V, § 965 (a); *infra*, pp. 20-21. Pursuant to this congressional direction, the President, on October 3, 1942, issued Executive Order 9250, *infra*, p. 25, by which he designated the National War Labor Board, which had, on January 12, 1942, been established by Executive Order 9017, 7 F. R. 237, *infra*, pp. 23-24, for the purpose of peacefully adjusting labor disputes, as the agency to carry out "the wage policies stated" in Executive Order 9250 or in the policy directives issued thereunder. On June 25, 1943, the Congress, in the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App., Supp. V, § 1501 *et seq.*, *infra*, pp. 21-23, conferred upon "the National War Labor Board * * * established by Executive Order Numbered 9017" certain "powers and duties" "in addition to all powers conferred on it by * * * any Executive order or regulation issued under the provisions of the Act of October 2, 1942, * * * and by any other statute." Section 7 (a), 50 U. S. C. App., Supp. V, § 1507 (a); *infra*, p. 21. Among such additional "powers and duties" were the following: In Section

7 (a) (3) the Board was authorized "To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute, and to issue subpoenas requiring such attendance or production" (*infra*, p. 22) and in Section 7 (a) (4) it was authorized to apply to the district courts for orders enforcing such subpoenas. *Infra*, p. 22. In Section 7 (b) the War Labor Disputes Act provided that "The Board, by its Chairman, shall have power to issue subpoenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof." *Infra*, p. 22. Section 7 (b) further provided that such subpoenas were to "be enforceable in the same manner, and subject to the same penalties, as subpoenas issued by the President under title III of the Second War Powers Act, approved March 27, 1942." *Infra*, pp. 22-23.

Petitioners deny, however, that Section 7 (b) of the War Labor Disputes Act, pursuant to which the subpoenas in question were issued,⁵

⁵ Each subpoena contains the following paragraph:

"Fail not under the penalties provided by Section 7 of the Act of Congress, enacted June 25, 1943, and Title III of the Second War Powers Act, approved March 27, 1942" (R. 10, 12, 46, 48).

The reference to the latter statutory provision clearly evidences that the subpoenas were issued under Section 7 (b)

grants power to the Board to issue subpoenas in a proceeding "which does not involve a labor dispute" (Pet. 2, 16-17). But the short answer to petitioners' contention is the plain language of Section 7 (b), *infra*, pp. 22-23. The construction for which petitioners argue would, moreover, render superfluous one portion of the Act, since ample powers with respect to the issuance and enforcement of subpoenas in aid of the Board's activities with respect to labor disputes are to be found in Section 7 (a) (3) and (4), *infra*, p. 22. Those subpoena provisions refer specifically to labor disputes. Section 7 (b), on the contrary, refers to the subpoena of witnesses and records "material to *any* inquiry or hearing before the Board or any designated member or agent thereof." [Italics supplied.] The only meaning which can be ascribed to Section 7 (b) is that which would make subpoena powers available in aid of functions of the Board other than those involving labor disputes—functions which were recognized by the Congress in Section 7 of the Act. The court below was clearly correct in avoiding a construction which would render part of Section 7 surplusage. *Ex parte Public National Bank of New York*, 278 U. S. 101; Sutherland, *Statutory Construction* (3d ed. 1943) § 4705.

of the War Labor Disputes Act (*infra*, pp. 22-23), since only in Section 7 (b) is Title III of the Second War Powers Act, 1942 (*infra*, pp. 18-20) referred to.

Since they were properly issued by the Chairman of the National War Labor Board pursuant to Section 7 (b) of the War Labor Disputes Act (*infra*, pp. 22-23), the district court was correct in enforcing the subpoenas pursuant to Title III of the Second War Powers Act, 1942 (*infra*, pp. 18-20).

2. As the court below found, there is no merit to petitioners' argument (Pet. 2, 5-6, 10, 18-22) that the subpoenas violated the right guaranteed by the Fourth Amendment of freedom from unreasonable searches and seizures. The subpoenas (R. 9-12, 46-48) have no oppressive features. They are specific. They were lawfully issued by the Chairman of the National War Labor Board who had "reasonable cause to believe that the [petitioner] corporation had been and is violating the provisions of the Wage Stabilization Act of 1942 and the Order and Regulations issued thereunder" (R. 84). The subpoena *duces tecum* (R. 10-12, 47-48) calls for records clearly relevant to the inquiry which the Board was conducting under the authority of the Stabilization Act and the War Labor Disputes Act (R. 85-86). It describes in detail the data required and defines with exactitude the period for which they are required. It calls for such books and payroll records as are commonly kept by business people (R. 50). It seeks nothing unusual or untoward. Moreover, petitioners "at no time questioned the sufficiency, definiteness or form of the subpoena

and subpoena duces tecum" (R. 85). As this Court has held, the Fourth Amendment, if applicable with reference "to the production of corporate records and papers in response to a subpoena or order authorized by law and safeguarded by judicial sanction, * * * at the most guards against abuse only by way of too much indefiniteness or breadth in the things required to be 'particularly described,' if also the inquiry is one the demanding agency is authorized by law to make and the materials specified are relevant. The gist of the protection is in the requirement * * * that the disclosure sought shall not be unreasonable." *Oklahoma Press Publishing Co. v. Walling*, No. 61, Oct. T., 1945, decided February 11, 1946, p. 15 of slip opinion. See also *Hale v. Henkel*, 201 U. S. 43, 72-73; *Wilson v. United States*, 221 U. S. 361, 376; *Baltimore & Ohio R. R. v. Interstate Commerce Comm.*, 221 U. S. 612, 622; *Essgee Co. v. United States*, 262 U. S. 151, 156-157; *Endicott Johnson Corp. v. Perkins*, 317 U. S. 501; *United States v. Bausch & Lomb Co.*, 321 U. S. 707, 727.

Petitioners claim that the information which was used as the basis for issuing the subpoenas was illegally obtained and that in this way also petitioner corporation's rights under the Fourth Amendment were violated (Pet. 19-22). This claim of petitioners is based upon the inspection of petitioner corporation's books that was made by an inspector of the Wage and Hour Division

of the Department of Labor prior to the hearing before the Enforcement Division of the Tenth Regional War Labor Board (R. 34-35, 38, 59, 84). Petitioners' complaint appears to be that while the inspector stated that she was from the Department of Labor, she "made no reference to the War Labor Board" (R. 34-35, 38). The short answer to petitioners' contention is that the inspection by the Labor Department inspector was fully authorized under the law. Cf. *Zap v. United States*, No. 489, Oct. T., 1945, decided June 10, 1946. By Executive Order 9250, *infra*, p. 25, the National War Labor Board was authorized by the President, in carrying out the Government's wage stabilization policies, "to avail itself of the services and facilities of such * * * Federal departments and agencies as, in the discretion of the National War Labor Board, may be of assistance to the Board." The subsequent congressional addition to the powers of the Board, contained in the War Labor Disputes Act, did not subtract in any way from the authority thus granted to the Board. Accordingly, in carrying out its functions under the Act and the Executive Order, it has been the common practice of the Board to utilize extensively the offices and personnel of the Wage and Hour Division of the Department of Labor. See National War Labor Board Release No. B 273, October 29, 1942, 1A Commerce Clearing House, *Labor Law Service*, p. 14,501.

Silverthorne Lumber Co. v. United States, 251 U. S. 385, cited by petitioners as being in conflict with the decision below (Pet. 6, 22), presented a situation quite different from that of the instant case. While the officers of the Silverthorne Company were detained under arrest in a criminal proceeding, Government representatives "without a shadow of authority" (251 U. S. at 390) entered the Company's office and removed all the books and records. "Copies of material papers were made and a new indictment was framed based upon the knowledge thus obtained. The District Court ordered a return of the originals but impounded the * * * copies." 251 U. S. at 391. Subpoenas were then issued to produce the originals and the district court held that the refusal to obey an order requiring such production was a contempt. This Court reversed. In the instant case, however, the proceeding in question is an administrative proceeding of a civil nature and not a criminal proceeding. The Labor Department inspector who examined petitioner corporation's books was fully authorized by law to do so and did so with petitioners' consent (R. 34, 84). No indictment or charges of any sort resulted from the inspection. And the records here sought by subpoena are ordinary wage and salary records kept by petitioner corporation in the usual course of business and are not, as further distinguished from the situation in the *Silverthorne* case, documents knowledge of whose specific existence was

obtained from the Labor Department inspector's inspection. Cf. *Essgee Co. v. United States*, 262 U. S. 151, 156-157. *Gouled v. United States*, 255 U. S. 298, also cited by petitioners as in conflict with the decision below (Pet. 6, 20-21), is no more in point than is the *Silverthorne* decision.

3. Petitioners assert that "If the Chairman of the National War Labor Board had the authority to issue the subpoena, the President had no power to transfer such authority to respondent, as Chairman of the National Wage Stabilization Board" (Pet. 10, 23-24). This argument also lacks merit. It is to be noted, first, that the subpoenas in question were issued by the Chairman of the National War Labor Board and not by the Chairman of the National Wage Stabilization Board. Moreover, there can be no question but that the authority to issue such subpoenas is presently in the chairman of the latter Board. The First War Powers Act, 1941 (Act of December 18, 1941, c. 593, 55 Stat. 838) empowers the President to redistribute the "functions, duties, and powers" of the several executive agencies (*infra*, p. 18). By Executive Order 9672, issued by the President on December 31, 1945, as amended, 11 F. R. 221, 5381, *infra*, pp. 25-27, the President established the National Wage Stabilization Board and transferred to it "all the present powers, functions, and responsibilities of the National War Labor Board * * * relating to the stabilization of wages and salaries for the purpose of carrying out the objectives author-

ized and directed by * * * the Stabilization Act of 1942, as amended, in accordance with the policies and procedures provided by Executive orders and regulations issued pursuant" thereto. Clearly, as the court below held, "the instant inquiry of the War Labor Board with the right we hold it has to issue subpoenas is a function and duty so transferred to the National Wage Stabilization Board" (R. 123-124).

CONCLUSION

The decision below is clearly correct. There is no conflict of authorities. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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JULY 1946.

APPENDIX

A. STATUTES

1. Section 1 of the First War Powers Act, 1941, December 18, 1941, 55 Stat. 838, 50 U. S. C. App., Supp. V, § 601, provides, in part, as follows:

For the national security and defense, for the successful prosecution of the war, for the support and maintenance of the Army and Navy, for the better utilization of resources and industries, and for the more effective exercise and more efficient administration by the President of his powers as Commander in Chief of the Army and Navy, the President is hereby authorized to make such redistribution of functions among executive agencies as he may deem necessary, including any functions, duties, and powers hitherto by law conferred upon any executive department, commission, bureau, agency, governmental corporation, office, or officer, in such manner as in his judgment shall seem best fitted to carry out the purposes of this title, and to this end is authorized to make such regulations and to issue such orders as he may deem necessary * * *

2. Title III of the Second War Powers Act, 1942, March 27, 1942, 56 Stat. 176, 177, 50 U. S. C. App., Supp. V, § 633, provides, in part, as follows:

(4) For the purpose of obtaining any information, verifying any report required, or making any investigation pursuant to paragraph (3), the President may admin-

ister oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: * * * No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpoena, or in any action or proceeding which may be instituted under this subsection (a), on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. * * *

(6) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States and the courts of the Philippine Islands shall have

jurisdiction of violations of this subsection (a) or any rule, regulation, or order or subpena thereunder, whether heretofore or hereafter issued, and of all civil actions under this subsection (a) to enforce any liability or duty created by, or to enjoin any violation of, this subsection (a) or any rule, regulation, order, or subpena thereunder whether heretofore or hereafter issued.. * * *

3. The Stabilization Act of 1942, October 2, 1942, 56 Stat. 765, 50 U. S. C. App., Supp. V, § 961 *et seq.*, provides, in part, as follows:

[SECTION 1.] In order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. * * *

SEC. 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. * * *

* * * * *
SEC. 5. (a) No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act. The President shall also prescribe the extent to which any wage or salary payment made in contravention of such regulations shall be disregarded by the executive departments

and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

4. Section 7 of the War Labor Disputes Act, June 25, 1943, 57 Stat. 163, 166, 50 U. S. C. App., Supp. V, § 1507, provides, in part, as follows:

SEC. 7. (a) The National War Labor Board (hereinafter in this section called the "Board"), established by Executive Order Numbered 9017, dated January 12, 1942, in addition to all powers conferred on it by section 1 (a) of the Emergency Price Control Act of 1942, and by any Executive order or regulation issued under the provisions of the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes," and by any other statute, shall have the following powers and duties:

(1) Whenever the United States Conciliation Service (hereinafter called the 'Conciliation Service') certifies that a labor dispute exists which may lead to substantial interference with the war effort, and cannot be settled by collective bargaining or conciliation, to summon both parties to such dispute before it and conduct a public hearing on the merits of the dispute. If in the opinion of the Board a labor dispute has become so serious that it may lead to substantial interference with the war effort, the Board may take such action on its own motion. At such hearing both parties shall be given full notice and opportunity to be heard, but the failure of either party to appear shall not deprive the Board of jurisdiction to proceed to a hearing and order.

(2) To decide the dispute, and provide by order the wages and hours and all other terms and conditions (customarily included in collective-bargaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board. In making any such decision the Board shall conform to the provisions of the Fair Labor Standards Act of 1938, as amended; the National Labor Relations Act; the Emergency Price Control Act of 1942, as amended; and the Act of October 2, 1942, as amended, and all other applicable provisions of law; and where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all the circumstances of the case.

(3) To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute, and to issue subpoenas requiring such attendance or production.

(4) To apply to any Federal district court for an order requiring any person within its jurisdiction to obey a subpoena issued by the Board; and jurisdiction is hereby conferred on any such court to issue such an order.

(b) The Board, by its Chairman, shall have power to issue subpoenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof. Such subpoenas shall be enforceable in the same manner, and subject to the same penalties,

as subpoenas issued by the President under title III of the Second War Powers Act, approved March 27, 1942.

B. EXECUTIVE ORDERS

1. Executive Order 9017, January 12, 1942, 7 F. R. 237, provides, in part, as follows:

Whereas by reason of the state of war declared to exist by joint resolutions of the Congress, approved December 8, 1941 and December 11, 1941, respectively (Public Laws Nos. 328, 331, 332, 77th Congress), the national interest demands that there shall be no interruption of any work which contributes to the effective prosecution of the war; and

Whereas as a result of a conference of representatives of labor and industry which met at the call of the President on December 17, 1941, it has been agreed that for the duration of the war there shall be no strikes or lockouts, and that all labor disputes shall be settled by peaceful means, and that a National War Labor Board be established for the peaceful adjustment of such disputes:

Now, Therefore, by virtue of the authority vested in me by the Constitution and the statutes of the United States, it is hereby ordered:

1. There is hereby created in the Office for Emergency Management a National War Labor Board, hereinafter referred to as the Board. The Board shall be composed of twelve special commissioners to be appointed by the President. Four of the members shall be representative of the public; four shall be representative of employees; and four shall be representative of

employers. The President shall designate the Chairman and Vice-Chairman of the Board from the members representing the public. The President shall appoint four alternate members representative of employees and four representative of employers, to serve as Board members in the absence of regular members representative of their respective groups. Six members or alternate members of the Board, including not less than two members from each of the groups represented on the Board, shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board.

* * * * *

3. The procedures for adjusting and settling labor disputes which might interrupt work which contributes to the effective prosecution of the war shall be as follows: (a) The parties shall first resort to direct negotiations or to the procedures provided in a collective bargaining agreement. (b) If not settled in this manner, the Commissioners of Conciliation of the Department of Labor shall be notified if they have not already intervened in the dispute. (c) If not promptly settled by conciliation, the Secretary of Labor shall certify the dispute to the Board: *Provided, however,* That the Board in its discretion after consultation with the Secretary may take jurisdiction of the dispute on its own motion. After it takes jurisdiction, the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board.

2. Executive Order 9250, October 3, 1942, 7 F. R. 7871, provides, in part, as follows:

**TITLE III—ADMINISTRATION OF
WAGE AND SALARY POLICY**

* * * * *

2. The National War Labor Board shall constitute the agency of the Federal Government authorized to carry out the wage policies stated in this Order, or the directives on policy issued by the Director under this Order. The National War Labor Board is further authorized to issue such rules and regulations as may be necessary for the speedy determination of the propriety of any wage increases or decreases in accordance with this Order, and to avail itself of the services and facilities of such State and Federal departments and agencies as, in the discretion of the National War Labor Board, may be of assistance to the Board.

3. Executive Order 9672, December 31, 1945, as amended, 11 F. R. 221, 5381, provides, in part, as follows:

1. (a) There is hereby established within the Department of Labor a Board to be known as the National Wage Stabilization Board, hereinafter referred to as the Board.

* * * * *

2. The Board shall have all the present powers, functions, and responsibilities of the National War Labor Board (established by Executive Order No. 9017 of January 12, 1942 and transferred to the Department of Labor by Executive Order No. 9617 of September 19, 1945) relating to the stabilization of wages and salaries for the pur-

pose of carrying out the objectives authorized and directed by the Emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended, in accordance with the policies and procedures provided by Executive orders and regulations issued pursuant to these Acts. * * *

3. Any dispute cases on which final action may not have been taken by the National War Labor Board prior to its termination shall be returned by said board to the parties. The Board shall have all the powers, functions and responsibilities of the National War Labor Board relating to the disposition of dispute cases for the following purposes only:

(a) The continued operation of the tripartite commissions, heretofore established by the National War Labor Board to carry out its directive orders relating to the steel, textile, and meat-packing industries, with the duties, powers and responsibilities heretofore conferred on said agencies, subject to any modification thereof which may be made by the Board;

(b) The appointment of arbitrators as may be necessary under National War Labor Board orders or collective bargaining agreements;

(c) The disposition of applications under Section 5 of the War Labor Disputes Act and the receipt of notices under Section 8 of that Act.

The Board shall have the powers of subpoena conferred upon the National War Labor Board by Section 7 of the War Labor Disputes Act.

* * * * *

5. * * * The presently effective rules, regulations, procedures, and orders of the

National War Labor Board relating to any function vested in the National Wage Stabilization Board by this order shall continue to be effective in accordance with their terms except as they may be inconsistent with this order or be modified or revoked from time to time by the Board. Any matter relating to the functions transferred by this order and now pending before the National War Labor Board may be acted upon by the National Wage Stabilization Board with the same validity and effect as though such action had been taken by the National War Labor Board.